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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report has been submitted in compliance with paragraph 15 of General Assembly resolution 62/69. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions; the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions; and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

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I. Introduction

1. In its resolution 62/69, the General Assembly requested the Secretary-General to submit a report to the Assembly at its sixty-third session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in the previous report of the Secretary-General (A/62/206 and Corr.1), the Chairman of the Security Council's Informal Working Group on General Issues of Sanctions transmitted the Working Group's report to the Security Council (see S/2006/997, annex). Several of the recommendations and best practices set out in that report related to improved sanctions design and monitoring; however, the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Council decided that the Working Group had fulfilled its mandate as contained in document S/2005/841, and took note with interest of the best practices and methods set out in the Working Group's report and requested its subsidiary bodies to take note as well.

3. During the period under review, and in keeping with the Security Council's shift from comprehensive economic sanctions to targeted sanctions, there were no pre-assessment reports or ongoing assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. In the period under review, and again in keeping with the Security Council's shift from comprehensive economic sanctions to targeted sanctions, no sanctions committees were approached by Member States with regard to special economic problems arising from the implementation of sanctions.

5. In nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.[1] Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and reimbursement of expenses associated with the provision of legal services; or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

6. Furthermore, in paragraph 15 of its resolution 1737 (2006), the Security Council decided that the assets freeze imposed under the same resolution would not prevent a designated person or entity from making payment due under a contract

[1] See Council resolutions 1452 (2002), 1532 (2004), 1572 (2004), 1591 (2005), 1596 (2005), 1718 (2006) and 1737 (2006).

entered into prior to the listing of such a person or entity, provided that the conditions set out in subparagraphs 15 (a) and (b) had been met, and after notification by the relevant States to the Committee established pursuant to resolution 1737 (2006) of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.

7. Through his 90-day reports to the Security Council, prepared in accordance with paragraph 18 (h) of resolution 1737 (2006), the Chairman of the Committee informed the Council of a total of 33 notifications submitted pursuant to paragraph 15, which did not require a Committee decision, of the receipt of payment or the unfreezing of assets in connection with contracts entered into prior to the listing of certain entities.[2] Thus, the provisions contained in paragraph 15 of resolution 1737 (2006), as well as the exceptions to the assets freeze for basic and extraordinary expenses,[1] can help to mitigate economic burdens arising from the implementation of Security Council assets freezes.

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

8. Pursuant to paragraph 7 of General Assembly resolution 59/45, the Assembly and the Economic and Social Council have continued to play their respective roles in the area of assistance to third States affected by the application of sanctions.[3]

A. General Assembly

9. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 27 to 29 February, from 3 to 5 March and on 7 March 2008. Chapter III.B of the report of the Special Committee[4] contains a summary of the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions.

B. Economic and Social Council

10. Pursuant to its decision 2000/32, the Economic and Social Council decided to include, in the general segment of the agenda of its substantive session of 2008, sub-item 13 (i), entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter but took no action under that sub-item.

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[2] See S/PV.5702, S/PV.5743, S/PV.5807, S/PV.5853 and S/PV.5909.

[3] During the period under review, there were no developments in the Committee for Programme and Coordination in the area of assistance to third States affected by the application of sanctions.

[4] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 33* (A/63/33).

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

11. In accordance with the relevant resolutions of the General Assembly,[5] the competent units within the Secretariat have maintained their capacity to collate and coordinate information about international assistance available to third States affected by the implementation of sanctions. As noted in the previous report of the Secretary-General (A/62/206, para. 14),

> The need to explore practical and innovative measures of assistance to the affected third States has been reduced considerably because targeted sanctions have led to significant reductions in unintended economic consequences for third States. Thus, appraisals of adverse consequences of sanctions actually incurred by third States have been replaced by detailed case-by-case assessments of the effectiveness of targeted sanctions and their adverse impact on innocent civilians in target and non-target States.

12. During the period under review, as noted in paragraph 4 above, there were no requests for assistance to third States (under the provisions of Article 50 of the Charter) affected by economic problems caused by United Nations sanctions imposed on another State. No such requests have been received since 2003. The Department of Economic and Social Affairs has nevertheless continued to explore methods to develop and refine a possible methodology to assess the impact of sanctions and remedial assistance to affected third States, as requested in paragraph 14 of resolution 62/69 and similar resolutions in the past.

13. Ongoing research in the Department of Economic and Social Affairs, with the possible assistance and collaboration of outside experts, is seeking to revise existing technical methods used to assess the impact and adverse economic consequences of targeted sanctions. This means, as described in previous reports and summarized in paragraphs 15 to 18 of A/62/206, a shift in emphasis from the macroeconomic modelling and analytical methods that were used to monitor the impact of comprehensive sanctions. The revised sanctions assessment methodology will put more emphasis on the effects of targeted sanctions on individuals, financial transactions and commercial activities and any other activity that may be targeted. It is difficult to define a standard framework for this, as the nature of sanctions and their likely impact, particularly the unintended economic consequences for third States, will vary from country to country.

14. The revised methodology therefore would have to be adapted on a case-by-case basis in order to determine the precise impact on specific targets and their translation to unintended economic consequences in third States. The revised methodology would also remain largely a theoretical exercise if there were few opportunities for its application in practice. This seems to have been the case in recent years, when the absence of appeals under Article 50 has reflected the fact that targeted sanctions have had the effect of reducing unintended adverse consequences on third States.

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[5] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38 and 62/69.

15. The second area in which the Department of Economic and Social Affairs is seeking improvement of the sanctions monitoring and assessment methodology is through closer collaboration with the Department of Political Affairs, other Secretariat units and intergovernmental bodies engaged in the design of targeted sanctions and evaluation of their implementation and effectiveness. This would involve, for example, the incorporation of Department of Economic and Social Affairs research and assessment capacities regarding the impact of sanctions into the monitoring and assessment activities of the panels of experts, or other measures requested by the Security Council.